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Jan. 5

Mr. William H. Riley, Commissioner  
Department of Labor  
17 Pleasant Street  
Concord, New Hampshire

Dear Mr. Riley:

You have inquired as to whether or not an employer of less than five persons, who voluntarily accepts the provisions of the Workmen's Compensation Act as to a business in which he may be engaged, would after such voluntary acceptance have coverage for farm or domestic servants who may also be in his employ. Essentially this question is whether or not an employer under the New Hampshire Act might voluntarily accept its terms as to certain categories of employees.

Voluntary acceptance is made under the provisions of Revised Laws, chapter 286, section 3 as amended by chapter 286, Laws of 1947, section 3. This section reads as follows:

"Any employer of less than five persons, or of farm labor or domestic servants may accept the provisions of this chapter by filing an election with the commissioner of labor. Such employer shall thereafter be liable to all of his employees in the same manner as other employers."

On the surface it would appear that an individual who is engaged in business employing less than five persons and who also engages domestic labor at his home would be required to provide coverage for the domestic servants if he voluntarily accepted the terms of the Act as to his business employees. It is our opinion that this result does not follow as a matter of law. A further factual determination would have to be made as to the extent of the acceptance on the part of the employer.

"Under other statutes, however, one who is engaged in different businesses, activities or operations, may elect to come under the Act as to one or more". 93 Am. Rev. Workmen's Compensation, section 39. I refer also to the annotation in 136 AER 600 at page 901. Cases are there cited in which the person engaged in one or more exempt business categories accepted the terms



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OFFICE OF ATTORNEY-GENERAL

Mr. William H. Riley

of the Workmen's Compensation Act as to one business activity and the courts hold that other exempt categories were not included in a voluntary acceptance as to one.

We feel therefore, that under the provisions of the New Hampshire Act, an employer voluntarily accepting the provisions of the Act would not, as a matter of law, be subject to its provisions as to farm and domestic labor.

Very truly yours,

Henry Dowst, Jr.,  
Assistant Attorney General

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